

In The Matter Of:

*Chad Hogan v.
City of Montgomery, et al.*

*Anthony Arnaud
February 20, 2006*

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Original File ARNAUD.txt, Pages 1-49

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<p>[1] IN THE UNITED STATES DISTRICT COURT</p> <p>[2] FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>[3] NORTHERN DIVISION</p> <p>[4]</p> <p>[5]</p> <p>[6] CHAD HOGAN,</p> <p>[7] Plaintiff,</p> <p>[8] vs. CIVIL ACTION NO.</p> <p>[9] 2:05CV-687-F</p> <p>[10] CITY OF MONTGOMERY, et al.,</p> <p>[11] Defendants.</p> <p>[12]</p> <p>[13]</p> <p>[14] * * * * *</p> <p>[15]</p> <p>[16]</p> <p>[17] DEPOSITION OF ANTHONY ARNAUD,</p> <p>[18] taken pursuant to notice and stipulation on behalf of the</p> <p>[19] Plaintiff, in the Law Office of Anderson K. Nelms, 847 S.</p> <p>[20] McDonough Street, Montgomery, Alabama, before Angela</p> <p>[21] Fulmer, Certified Shorthand Reporter and Notary Public in</p> <p>[22] and for the State of Alabama at Large, on February 20,</p> <p>[23] 2006, commencing at 1 p.m.</p>	<p>[1] STIPULATIONS</p> <p>[2] It is stipulated and agreed by and between</p> <p>[3] counsel representing the parties that the deposition of</p> <p>[4] ANTHONY ARNAUD may be taken before Angela Fulmer,</p> <p>[5] Certified Shorthand Reporter and Notary Public in and for</p> <p>[6] the State of Alabama at Large, without the formality of a</p> <p>[7] commission; and all formality with respect to other</p> <p>[8] procedural requirements is waived; that objections to</p> <p>[9] questions, other than objections as to the form of the</p> <p>[10] questions need not be made at this time, but may be</p> <p>[11] reserved for a ruling at such time as the deposition may</p> <p>[12] be offered in evidence or used for any other purpose by</p> <p>[13] either party as provided by the Federal Rules of Civil</p> <p>[14] Procedure.</p> <p>[15] It is further stipulated and agreed by and</p> <p>[16] between the parties hereto and the witness, that the</p> <p>[17] signature of the witness to this deposition is hereby</p> <p>[18] waived</p> <p>[19]</p> <p>[20]</p> <p>[21]</p> <p>[22]</p> <p>[23] * * * * *</p>
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<p>[1] APPEARANCES</p> <p>[2]</p> <p>[3] FOR THE PLAINTIFF:</p> <p>[4] ANDERSON K. NELMS, ESQUIRE</p> <p>[5] Attorney at Law</p> <p>[6] 847 S. McDonough Street</p> <p>[7] Montgomery, Alabama 36104</p> <p>[8]</p> <p>[9] FOR THE DEFENDANTS:</p> <p>[10] H. LEWIS GILLIS, ESQUIRE</p> <p>[11] RAMADANAH SALAAM, ESQUIRE</p> <p>[12] Thomas, Means, Gillis & Seay, P.C.</p> <p>[13] 3121 Zelda Court</p> <p>[14] Montgomery, Alabama 36106</p> <p>[15]</p> <p>[16] KIMBERLY O. FEHL, ESQUIRE</p> <p>[17] Assistant City Attorney</p> <p>[18] 103 No. Perry Street</p> <p>[19] Montgomery, Alabama 36104</p> <p>[20]</p> <p>[21] JIM BODIN, ESQUIRE</p> <p>[22] McPhillips Shinbaum, L.L.P.</p> <p>[23] 516 S. Perry Street</p> <p>[24] Montgomery, Alabama 36101</p>	<p>[1] INDEX</p> <p>[2]</p> <p>[3] EXAMINATION PAGE</p> <p>[4] BY MR. NELMS: 5</p> <p>[5] BY MR. GILLIS: 40</p> <p>[6] BY MR. NELMS: 43</p> <p>[7]</p> <p>[8]</p> <p>[9]</p> <p>[10]</p> <p>[11]</p> <p>[12]</p> <p>[13]</p> <p>[14]</p> <p>[15]</p> <p>[16]</p> <p>[17]</p> <p>[18]</p> <p>[19]</p> <p>[20]</p> <p>[21]</p> <p>[22]</p> <p>[23]</p>

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[1] ANTHONY ARNAUD, of lawful age,
[2] having been first duly sworn, testified as follows:
[3] **EXAMINATION**
[4] **BY MR. NELMS:**
[5] **MR. NELMS:** Usual stipulations?
[6] **MR. BODIN:** Yes.
[7] **Q.** State your name for the Record, please.
[8] **A.** My name is Anthony Mark Arnaud.
[9] **Q.** All right. Mr. Arnaud, do you own Arnaud's Fine
[10] Meats?
[11] **A.** Yes, sir, I did.
[12] **Q.** Did?
[13] **A.** Yeah. Well -- I mean, in Montgomery. I'm in
[14] Walsboro now.
[15] **Q.** Okay. And everything that we're going to talk about
[16] today is generally going to be related to events
[17] that occurred on March the 31st or April 1, 2005.
[18] If I don't specify otherwise, that's the date that
[19] we're generally talking about. If you have any
[20] questions -- this is going to be a real short
[21] deposition. But if you have any questions or if you
[22] don't understand one of the questions that I ask,
[23] you just stop and you tell me that don't

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[1] **A.** Yes, sir.
[2] **Q.** Tell me, if you will.
[3] **A.** It was raining.
[4] **Q.** All right.
[5] **A.** Very -- I mean, not -- raining. Just raining like
[6] this -- like today. Raining.
[7] **Q.** Okay. Any thunder and lightning?
[8] **A.** At times, yes, sir.
[9] **Q.** Okay. Did you have occasion to have -- check that.
[10] Do you a burglar alarm on the business?
[11] **A.** Yes, sir. I sure did.
[12] **Q.** Okay. And is that maintained through a service?
[13] **A.** Yes, sir.
[14] **Q.** Which one?
[15] **A.** I haven't had them since probably --
[16] **MR. BODIN:** If you remember.
[17] **A.** If I remember. But I don't remember really the --
[18] It's not ADT, but it's -- I just can't remember the
[19] name of the --
[20] **Q.** Okay. Did you -- but you paid a monthly service
[21] fee?
[22] **A.** Yes, sir. I sure did.
[23] **Q.** Okay. And do you recall exactly what types of

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[1] understand. You can stop at any time you want to to
[2] confer with your lawyer or to take a break. There's
[3] not a penalty against you for doing that. You're
[4] welcomed to do that if you wish.
[5] **A.** Yes.
[6] **Q.** Okay. And -- I'm sorry. The name of your business
[7] is properly Arnaud's Quality Meats?
[8] **A.** Quality Meats, yes, sir.
[9] **Q.** Okay. And on the date in question, was it located
[10] on or about the Eastern Boulevard --
[11] **A.** Yes, sir.
[12] **Q.** -- in Montgomery? And what's the proper address?
[13] **A.** It was 425 Northeast Boulevard.
[14] **Q.** Okay. And did you reside there near the business?
[15] **A.** Yes, sir. I lived in the trailer park.
[16] **Q.** Okay. And approximately how far away from the
[17] business was your trailer?
[18] **A.** Approximately a hundred yards.
[19] **Q.** Okay. And do you recall the night of March 31,
[20] 2005?
[21] **A.** Yes -- yes, sir.
[22] **Q.** Okay. And do you recall what the weather was like
[23] that night?

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[1] services were provided related to that security
[2] service?
[3] **A.** Well, I had calls. And not all of them was, you
[4] know, calls of -- but they'd call me up and say that
[5] there was. And then I'd have to -- the city police
[6] would come and inspect and leave a sheet of paper
[7] and I'd get it from them. And then I'd go on home,
[8] you know, that was the --
[9] **Q.** Okay. I didn't ask a very good question. My
[10] experience has been, that with security companies,
[11] there are different types of services that they
[12] offer you. Do you recall what types of services
[13] that you got from this?
[14] **A.** No, sir. All they would -- that this -- it's called
[15] central control. When they -- anything that
[16] pertained with the door or pertained with the place
[17] where the alarm went off, they would call me.
[18] **Q.** Okay.
[19] **A.** And that way the city police would respond also.
[20] **Q.** Okay. Do you know whether or not it was central
[21] control that contacted the police?
[22] **A.** Central control? Yes, sir. Without the -- central
[23] control, they call me.

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[1] Q. Okay. But in regard to contacting the Montgomery
[2] Police Department, do you know who would contact the
[3] Montgomery Police Department?
[4] A. That I wouldn't know. I mean, I just know who would
[5] call me. But I know every time I was there they
[6] were there.
[7] Q. Okay. Was this a silent alarm, or did it have an
[8] audible alarm?
[9] A. It was an audible. It made noise.
[10] Q. Okay. What did it sound like?
[11] A. Real loud. It was like a big siren (indicating
[12] sound). Just real loud.
[13] Q. Okay. So it was a siren sound?
[14] A. Yes, sir.
[15] Q. Okay. Not a bell?
[16] A. No, sir.
[17] Q. Not a whistle?
[18] A. Huh-uh.
[19] Q. Okay. And describe for me how the security system
[20] worked inside your building there at Quality Meats?
[21] That is to say, were there infrared sensors,
[22] magnetic sensors, can you recall?
[23] A. The only one was sensors they had up in the corners

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[1] of each room. A sensor that would pick up, I guess,
[2] motion --
[3] Q. Okay.
[4] A. -- and would set it off or, you know -- movement,
[5] whatever, I don't know --
[6] Q. Okay.
[7] A. -- or recall other -- because I don't know exactly
[8] how it worked, but that's, you know...
[9] Q. Okay. Were there individual detection devices on
[10] the windows or doors?
[11] A. Yes, sir. They had some little modules, I guess, on
[12] the front door and the back door and the side door.
[13] Q. Okay. What about the windows?
[14] A. No, sir.
[15] Q. Okay. During the period of time around March 2005,
[16] did you have any or many occasions for there to be
[17] false alarms on that security system?
[18] A. I've had a few, yes, sir.
[19] Q. Okay. Let's just take March of 2005. If you can,
[20] to the best of your remembrance, how many false
[21] alarms did you have in March of 2005?
[22] A. That I couldn't really tell you, sir.
[23] Q. Okay. Were you charged a fee every time the alarm

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[1] went off?
[2] A. Now, I never got charged for any, no, sir.
[3] Q. Okay. Do you recall the bills that you received
[4] from this security service?
[5] A. Yes, sir.
[6] Q. Okay. Did they indicate -- that is, the bills --
[7] did they indicate every occurrence for your alarm to
[8] go off?
[9] A. I really can't remember about it. It's been so
[10] long, you know, since -- and I haven't did any
[11] business, because I don't have those people anymore.
[12] When I left and -- I don't have them anymore.
[13] Q. Okay. If you wanted to find out what security
[14] service you used in March 2005, how would you go
[15] about that?
[16] A. I really couldn't tell you.
[17] Q. Okay. Did you keep records?
[18] A. No, sir. I sure didn't.
[19] Q. Okay.
[20] A. I don't have any records of it.
[21] Q. Okay. Do you have an accountant?
[22] A. Yes, sir.
[23] Q. Okay. Did you in March of 2005?

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[1] A. Yes, sir.
[2] Q. Okay. Does your accountant keep records of your
[3] business?
[4] A. Yes, sir.
[5] Q. Would your accountant have billing records from the
[6] security system that you used?
[7] A. He might. He might not. I don't know.
[8] Q. Okay. Who is your accountant?
[9] A. Tommy Bourque. Tommy Bourque.
[10] Q. Bork? B-O-R-K?
[11] A. B-O-U-R-K.
[12] Q. Okay.
[13] A. B-O-U-R-Q-U-E, Bourque.
[14] MR. BODIN: Spell that again.
[15] A. B-O-U-Q -- wait. B-O-U-R-Q-U-E, Bourque.
[16] Q. Okay. And do you still use Mr. Bourque?
[17] A. No, sir.
[18] Q. Okay. But you did in March of 2000 --
[19] A. Yes, sir.
[20] Q. Okay. And did you have a checking account in March
[21] 2005 for your business?
[22] A. Yes, sir. I'm sure I did.
[23] Q. Okay. If you paid those security service bills,

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[1] would they have been paid through that checking
[2] account?
[3] A. Yes and no, because --
[4] **THE WITNESS:** I need to talk to you for a
[5] minute.
[6] **MR. BODIN:** Okay.
[7] **MR. NELMS:** Fine. We'll go off the
[8] Record.
[9] **THE WITNESS:** I need just about a five
[10] minute break.
[11] **MR. NELMS:** That's fine with me.
[12] (Brief recess.)
[13] **MR. NELMS:** Back on the Record.
[14] Q. (By Mr. Nelms) All right. I think I was asking
[15] you -- really what I was looking for, Mr. Arnaud, is
[16] how we can find out what the name of the security
[17] service is. That's all.
[18] A. Okay. Well, like I said, I don't remember the
[19] name. But the guy that had it -- I guess an
[20] independent. Only he wasn't like ADT. It's just
[21] another --
[22] Q. Brinks? Yeah.
[23] A. Yeah. And --

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[1] Q. How frequent were false alarms?
[2] A. I guess -- maybe a couple a months. Three a month.
[3] Q. Three a month?
[4] A. Yes, sir.
[5] Q. Okay. And on the night in question, March 31, 2005,
[6] on -- were there any false alarms that night?
[7] A. Yes, sir.
[8] Q. Okay. And you said it was raining?
[9] A. Uh-huh.
[10] Q. And I believe I asked you was it thundering and
[11] lightning.
[12] A. Yes, sir.
[13] Q. And it was.
[14] A. Off and on.
[15] Q. Okay. And on how many -- let's just take the whole
[16] twenty-four-hour period of March 31, 2005. In that
[17] twenty-four-hour period, how many times did your
[18] alarm system go off?
[19] A. Twice.
[20] Q. Twice?
[21] A. Yes, sir.
[22] Q. Okay. Does that include the time that brings us
[23] here on this lawsuit today?

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[1] **MR. BODIN:** What's his name?
[2] **THE WITNESS:** It was just -- I just know
[3] him by his name, Steve.
[4] A. And he wanted to trade, like -- see, I had my
[5] business and he had his. And he just said, well,
[6] when my employees or people come in to eat and
[7] stuff, we'll just trade off for it -- for it. And
[8] that's why I never got no -- that's why it kind of
[9] puzzled me when you asked me about -- I couldn't
[10] answer you, because I had didn't have no --
[11] Q. Okay. So --
[12] A. -- record on it because we traded. And he just left
[13] it at that and never said I owed him anything except
[14] for just signing that -- when one would come in to
[15] eat, you know, sign him off.
[16] Q. Okay. Specifically referring to a period of time
[17] between, say, January and April of 2005, you said
[18] that there would be occasions when you would have
[19] false alarms --
[20] A. Uh-huh.
[21] Q. -- on your burglar system -- or your security system
[22] rather.
[23] A. Yes, sir.

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[1] A. Yes, sir.
[2] Q. Okay. And so it had gone off once before. And what
[3] time of day was it when it first went off on March
[4] the 31st?
[5] A. It was at night. It was, like, 11 a.m. at night,
[6] March 31st. I guess each call --
[7] **MR. BODIN:** P.m.
[8] **THE WITNESS:** Yeah. P.m.
[9] Q. Okay. And then -- and what did you do?
[10] A. Well, I --
[11] Q. When it first went off?
[12] A. I woke up my boy and asked him to ride with me up to
[13] the store to check it out. So we went in -- rode
[14] around the building, went to the front, and walked
[15] in. We went in the kitchen, looked around, didn't
[16] see nothing out of the ordinary. Went back, pushed
[17] the alarm back off. Went in, locked up, went home.
[18] Q. You mean you turned it back on?
[19] A. Turned it back on, yes, sir.
[20] Q. Okay. And --
[21] (Brief interruption.)
[22] **MR. NELMS:** Back on the Record.
[23] Q. How old is your boy?

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- [1] A. He -- at the time, he was -- let's see. He's
[2] fifteen. He was fourteen.
[3] Q. Okay. So you went up for the false alarm, you
[4] didn't see that anything -- there had been no
[5] occurrence?
[6] A. No, sir.
[7] Q. Did the Montgomery Police Department show up?
[8] A. At the time, no, sir. That -- not when I was
[9] there. You know what I'm saying? And I had already
[10] locked up and went home.
[11] Q. Okay. And how long did it take you to get from your
[12] house up to the store?
[13] A. Probably about five minutes -- three minutes.
[14] Q. Okay. And how long did you stay in the store?
[15] A. Probably five minutes.
[16] Q. Okay.
[17] A. Just enough to walk around and look at everything.
[18] And I went back up there and punched the alarm back
[19] on again.
[20] Q. Okay. When the alarm goes off, other than the
[21] audible alarm that we hear that you said sounded
[22] like a siren, do you have any flashing lights or any
[23] lights that come on?

- [1] said -- you know, kept hearing the phone go off.
[2] And I had just went back to sleep. I got up and
[3] grabbed it and they said, Mr. Arnaud, this is not a
[4] false alarm. The police are at your store. And
[5] that's when I hurried up and got up and, you know,
[6] got dressed. I tried to wake up my boy. This time
[7] he didn't feel like going again with me, so I just
[8] went on my own --
[9] Q. Okay.
[10] A. -- back to the store.
[11] Q. So someone at central control told you, this time
[12] it's not a false alarm?
[13] A. Right.
[14] Q. Okay. Did they indicate how they knew it was not a
[15] false alarm?
[16] A. Not really. They didn't really say in detail. They
[17] said that the cops was in -- was already at the
[18] place.
[19] Q. Okay. And then you --
[20] A. The police --
[21] Q. -- went up to the store?
[22] A. Yes, sir.
[23] Q. Okay. And when you got to the store, were the

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- [1] A. Because -- there's no -- not that I really know of.
[2] Because when I walked in there, I just would hear it
[3] on and just go and just punch it off to make it
[4] quit, you know, the siren, whatever.
[5] Q. Okay. Has your -- how long did you have that store
[6] there on the Eastern Boulevard?
[7] A. Since 2001.
[8] Q. Okay. And during that period of time from 2001 when
[9] you first opened the store until March of 2005, did
[10] you ever have any occurrence of break-ins?
[11] A. No, sir.
[12] Q. Okay. So it's fair to say that every time the alarm
[13] went off it was a false alarm?
[14] MR. BODIN: Object to the form.
[15] A. Yeah. Well --
[16] Q. Best that you know.
[17] A. Yes, sir.
[18] Q. Okay. Then did you have occasion to have the alarm
[19] go off a second time on March 31, 2005?
[20] A. Yes, sir.
[21] Q. Okay. And tell us what happened then.
[22] A. This was approximately an hour after the first one.
[23] And when I got the call from central control, I

- [1] police there?
[2] A. Yes, sir.
[3] Q. Okay. How many police officers were there?
[4] A. It's been a while. Roughly, three that I remember.
[5] Three to four -- three.
[6] Q. Okay. Were they all in uniform?
[7] A. Yes, sir.
[8] Q. Okay. And did you speak with them?
[9] A. Briefly.
[10] Q. Okay. Did you identify yourself as the owner of the
[11] store?
[12] A. Yes, sir. Yes, sir.
[13] Q. Okay.
[14] A. Because I -- yes, sir.
[15] Q. Okay. And any other conversation with the police
[16] officers?
[17] A. Not really.
[18] Q. Okay. Did they ask you anything?
[19] A. They just more or less said that, you know, we got
[20] here, they was -- somebody was walking back to the
[21] car, it was parked against the outside window, and
[22] fled. And we took off after them, and this and that
[23] and --

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[1] Q. Okay.
[2] A. And then the alarm went -- was off. And this and
[3] that. They said it was a -- possibly a break-in.
[4] So...
[5] Q. Okay. Did they ask you --
[6] A. That was to the best of my knowledge.
[7] Q. Did they ask you to do an inspection of the store?
[8] A. Yes, sir. And I did.
[9] Q. Okay.
[10] A. Briefly -- I mean, I went in the kitchen, I went to
[11] the register, and everything in the register was the
[12] same.
[13] Q. Okay.
[14] A. I didn't have no money stolen.
[15] Q. Okay. Was anything missing from the store at all?
[16] A. Not to my knowledge.
[17] Q. Okay.
[18] A. That night for sure. And then the next day I was in
[19] there I didn't notice anything.
[20] Q. I'm sorry. I didn't get your --
[21] A. I didn't notice anything.
[22] Q. Okay. Have you ever at all reported anything stolen
[23] from your store as a result of the events of March

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[1] MR. BODIN: Potting soil.
[2] A. Yeah. Potting soil. That was what it was.
[3] Q. Okay. So all three pots had potting soil in them?
[4] A. Yes, sir.
[5] Q. Okay. Was --
[6] A. To my knowledge.
[7] Q. Okay. Was there potting soil spilt or spread out on
[8] the floor?
[9] A. Just right at the edge. Just where it fell.
[10] Q. Okay. Do you have any knowledge or reason to
[11] believe why those pots were on the floor where you
[12] saw them?
[13] A. No, sir. Unless somebody tried to get in or push
[14] them over or something. They wouldn't have fell on
[15] their own. I don't think so.
[16] Q. Okay. When you showed up at the store after the
[17] second alarm, were the police officers inside the
[18] building?
[19] A. Yes, sir.
[20] Q. Okay. Did you open the door for them to let them
[21] in?
[22] A. Yes, sir.
[23] Q. You did?

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[1] 31, 2005?
[2] A. No, sir.
[3] Q. Okay. Did you notice anything being disturbed in
[4] the store? That is, objects out of place, anything
[5] broken.
[6] A. The only thing, on the windowsill of the window that
[7] was open, the flower pots was on the floor.
[8] Q. Okay.
[9] A. And that was it that I noticed.
[10] Q. Were they broken?
[11] A. Chipped. One of them was chipped. But not really
[12] -- the others weren't broken. There're three of
[13] them.
[14] Q. Three flower pots?
[15] A. Yes, sir.
[16] Q. And they were all three on the ground?
[17] A. Correct.
[18] Q. What are they made of?
[19] A. Well, a couple of them was sort of like this
[20] plastic -- I mean, that hard plastic.
[21] Q. Okay. Were they full of dirt?
[22] A. Dirt and that -- not that real -- what do you call
[23] it?

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[1] A. Yes, sir.
[2] Q. So they were not in the building when you first
[3] arrived?
[4] A. No, sir.
[5] Q. Okay.
[6] A. They were in the building when I first -- well, no,
[7] not when I first -- not the first alarm they wasn't
[8] in there.
[9] Q. Now, I'm referring to the second alarm.
[10] A. Yes, sir.
[11] Q. The one that occurred an hour later.
[12] A. Uh-huh.
[13] Q. When you first arrived at the store, were the police
[14] officers inside the building?
[15] A. Uh-huh.
[16] Q. That's a yes?
[17] A. Yes, sir.
[18] MR. BODIN: You need to say yes or no so
[19] she can take it down.
[20] A. Oh, yes. Yes, sir. Yes, sir.
[21] Q. Did they go through the front door?
[22] A. No, sir.
[23] Q. Did they go through any of the doors on the

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[1] building?
[2] A. No, sir.
[3] Q. How did they get inside the building?
[4] A. I wasn't there. Possibly -- I don't know. The only
[5] way would be through the window I guess. I don't
[6] know.
[7] Q. Okay.
[8] A. The door -- I had to unlock the door to get in.
[9] Q. Okay. Is there any way someone, to the best of your
[10] knowledge, could come through the window without
[11] removing the three pots that you've referred to?
[12] MR. BODIN: Object to the form.
[13] Q. Do you understand the question?
[14] A. Ask that again.
[15] Q. The question was, you've described three pots that
[16] were on the windowsill.
[17] A. Yes, sir.
[18] Q. And this is a window that you had left open?
[19] A. That I had left open?
[20] MR. BODIN: Object to the form. He never
[21] said that.
[22] A. No. I never said that I left it open. I said it
[23] was open when I got there.

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[1] Q. Okay.
[2] A. That's the only thing that was open besides -- that
[3] I had the unlock the door to get in.
[4] Q. Okay. Had you left that window open?
[5] A. Had I left it open?
[6] Q. Yes, sir.
[7] A. Not to my knowledge.
[8] Q. Okay.
[9] A. Unless, you know -- if I did, I don't recall doing
[10] it. But I know when I got there and they told me
[11] what they saw and what they did on the chase and
[12] that -- and that's -- to my knowledge, that's
[13] everything. That's all I know about it.
[14] Q. Okay. You testified that around eleven o'clock you
[15] had gone up in response to an alarm call.
[16] A. (Nods head).
[17] Q. And you entered the building and you walked around
[18] the inside of the building at that time; is that
[19] correct?
[20] A. Yes.
[21] Q. Okay. Did you notice this window that had the three
[22] pots on the windowsill?
[23] A. No, sir.

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[1] Q. You don't know whether it was opened or closed?
[2] A. That's right.
[3] Q. Okay. Did you ever indicate to any officers --
[4] police officers that night, that you, in fact, had
[5] left that window open?
[6] A. No, sir. I said it could have been maybe a
[7] possibility. But at -- to my knowledge, I hadn't
[8] left it open.
[9] Q. Okay.
[10] A. You know what I'm saying?
[11] Q. So as you sit here today giving your testimony at
[12] deposition, you could have left the window open that
[13] night?
[14] A. It could have been possible.
[15] Q. Okay. Do you know of any reason or cause as to why
[16] you would leave the window open?
[17] A. What I think --
[18] MR. BODIN: Object to the form.
[19] Q. Do you know of any reason or cause as to why you
[20] would leave the window open that night?
[21] A. I really -- I don't remember that. Why I would
[22] have. But it had a reason if I did.
[23] Q. Okay. Fair enough.

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[1] So when you arrived at the store on the second
[2] call --
[3] A. Yes, sir.
[4] Q. -- of the alarm going off, there were police
[5] officers already occupying the inside of the
[6] premises?
[7] A. Yes, sir.
[8] Q. Okay. And it's your belief that they went in
[9] through the side window where the three pots had
[10] been?
[11] MR. BODIN: Object to the form.
[12] Q. Is that correct?
[13] A. Yes, sir.
[14] Q. Okay. And you don't recall any other conversations
[15] that you had with the police officers that night?
[16] A. No, sir.
[17] Q. Okay. Now, did you have occasion to go to the
[18] headquarters at the Montgomery Police Department?
[19] A. Yes, sir.
[20] Q. Okay. And how is it that you came to go to the
[21] headquarters at the Montgomery Police Department?
[22] A. They just said if -- to press charges, I had to go
[23] downtown.

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[1] Q. Okay. And you indicated that you had discerned that
[2] nothing was missing from the store; is that correct?
[3] A. Yes, sir.
[4] Q. Okay. Was this before or after you were instructed
[5] to go downtown to file charges?
[6] A. That I noticed nothing was taken?
[7] Q. Yes, sir.
[8] A. More or less -- at the time when I was in the store,
[9] just briefly and -- at the time I can't say there
[10] was nothing stolen.
[11] Q. Okay.
[12] A. That I really looked at.
[13] Q. Okay. Do you recall which officer instructed you to
[14] come down to headquarters if you wished to file a
[15] claim?
[16] A. No, sir.
[17] Q. All right. Do you recall whether or not there
[18] was -- that police officer was uniformed or not
[19] uniformed?
[20] A. They was all uniformed.
[21] Q. Okay. And about what time did you arrive at
[22] headquarters?
[23] A. About one thirty.

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[1] Q. All right. So it was almost an hour and a half
[2] after you were called to your store for the second
[3] alarm?
[4] A. Yes, sir.
[5] Q. Okay. What happened in that intervening period of
[6] time, that hour and a half period of time. What did
[7] you do?
[8] A. More or less at the time just hanging around and
[9] just looking around. And then he said, if you want
[10] to press charges, you've got to go downtown.
[11] Q. Okay.
[12] A. Then he said, do you know where it's at. And I
[13] said, yes, sir. And I went down, you know...
[14] Q. Okay. Did you want to press charges?
[15] MR. BODIN: Object to the form.
[16] MR. NELMS: On what ground?
[17] MR. BODIN: I don't have to give a ground.
[18] Object to the form of the question.
[19] MR. NELMS: Actually, the Middle District
[20] rule says that I can ask.
[21] MR. BODIN: You can ask. I'm objecting to
[22] the form of the question.
[23] Q. (By Mr. Nelms) Do you have an answer?

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[1] A. No, sir.
[2] Q. Okay. But you were of the impression at the time
[3] that nothing was taken --
[4] MR. BODIN: Object to the form.
[5] MR. GILLIS: Objection.
[6] Q. -- from your building?
[7] MR. BODIN: He's already asked -- answered
[8] that question.
[9] A. To my knowledge, there was nothing taken.
[10] Q. Okay. But you did wish to press charges?
[11] A. Well, if there was charges on him -- I mean, on the
[12] thing -- I mean, I was being called out to
[13] apparently a burglary. And when I get there, you
[14] know, police is in there and they've got people --
[15] chasing people and this and that. You know, I
[16] didn't have no other way to think that -- and I'd
[17] want to press charges on anybody if I had the
[18] grounds to press charges.
[19] Q. Okay. So, if you recall, who did you first see when
[20] you got to police headquarters?
[21] A. You see so many detectives. At times I didn't -- I
[22] don't even know the first one I talked to it's been
[23] so long.

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[1] Q. Okay. Do you remember a Detective Kirk Pelham?
[2] A. Not that I recall.
[3] Q. Okay. Do you remember meeting a Detective Cook?
[4] A. No. Not that my -- that I recall. Because they had
[5] me -- I was just in a room by myself. In an office.
[6] And I -- I didn't talk to -- really, actually, I
[7] only --
[8] MR. BODIN: Just if you know these people.
[9] A. Right. I didn't talk -- no, sir.
[10] Q. Okay. If you can recall, even though you can't
[11] remember the name, did you have occasion to speak to
[12] any police officers while you were at headquarters?
[13] A. Not really. Like I said, I walked in, they put me
[14] in a room, and I heard them -- a couple other -- but
[15] the guys they had chased -- got a couple of them.
[16] They'd came down the hall and they went in a room
[17] with them and closed the door. And the only thing I
[18] remember doing was going to sign the paperwork and
[19] leave. I left around four or four thirty that
[20] morning.
[21] Q. Okay. So did you draft a statement to give to the
[22] police?
[23] A. No, sir.

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[1] Q. Okay. Well, what did you sign?
[2] A. I guess a warrant.
[3] Q. Okay.
[4] A. That's all I recall if it's -- what I signed was a
[5] warrant.
[6] Q. Okay. Did you read the warrant before you signed
[7] it?
[8] A. More or less -- in a sense, yes, sir, I did.
[9] Q. Okay. Did you agree with what it said?
[10] MR. BODIN: Object to the form. Do you
[11] have it here, what he signed, where he can read
[12] it before he answers any questions? You're
[13] asking him to remember a document that he
[14] looked at a year --
[15] THE WITNESS: It's been a year ago or a
[16] year and a half.
[17] Q. Are you going to answer the question?
[18] A. No, sir, I can't.
[19] Q. Okay. Do you recall what the warrant said?
[20] A. No, sir.
[21] Q. Okay. Do you recall having any conversations with
[22] anyone at the Montgomery Police Department about the
[23] language or substance of the words in the warrant?

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[1] A. No, sir.
[2] Q. Okay. In fact, was the document that you signed a
[3] warrant?
[4] MR. BODIN: Object to the form. If you
[5] know.
[6] A. I don't know.
[7] Q. Do you recall what type of document it was?
[8] A. No, sir.
[9] Q. Okay.
[10] A. Like I said, I went in --
[11] MR. BODIN: Just answer his question.
[12] A. That was it.
[13] Q. Okay.
[14] A. I don't remember nothing about it.
[15] Q. Do you remember what time it was when you left the
[16] police department?
[17] A. I would say it was probably four o'clock in the
[18] morning.
[19] Q. Okay.
[20] A. Got home about four thirty.
[21] Q. Okay. So you were there from about one thirty in
[22] the morning until four o'clock in the morning?
[23] A. Yes, sir.

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[1] Q. Okay. And you do not recall for us the substance of
[2] any conversations that you had with any members of
[3] the police department?
[4] A. I'd stay in there for two and half, three hours
[5] without seeing hardly -- with nobody. I ain't seen
[6] nobody.
[7] Q. Okay. Anybody give you an explanation as to why
[8] you --
[9] A. No. A couple of times they came and stuck their
[10] head in and said it won't be that much longer. But
[11] it went on for this long, long -- I wasn't talking
[12] to anybody.
[13] Q. Okay. Do you recall the names of any individuals,
[14] whether they're with the Montgomery Police
[15] Department or associated with the Montgomery Police
[16] Department, that you met that night while at police
[17] headquarters?
[18] A. No, sir.
[19] Q. Okay. Can you give me a physical description of
[20] anyone that you met between one thirty and four
[21] o'clock in the morning at the Montgomery Police
[22] Department?
[23] A. It's been so long ago. The only one I saw was the

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[1] one that put me in the room. A white guy.
[2] Q. Okay. Describe this --
[3] A. A white policeman. About yea high (indicating)
[4] maybe as tall as I am.
[5] Q. Okay. Young or old?
[6] A. Thirties to forties.
[7] Q. All right. Glasses?
[8] A. Not that I recall.
[9] Q. Facial hair?
[10] A. No, sir.
[11] Q. Fat or thin?
[12] A. I guess average.
[13] Q. Okay. Did anyone in any way, to the best of your
[14] recollection, induce you or force you to sign any
[15] documents?
[16] A. No, sir.
[17] Q. Okay. Anybody instruct you in any way that night on
[18] how you should answer any questions or testify at
[19] trial regarding anything that happened that night?
[20] A. No, sir.
[21] Q. Okay. Did anybody tell you that night that they had
[22] made an arrest?
[23] A. That night?

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[1] Q. Yes.
[2] A. Yes, sir.
[3] Q. Okay. Do you recall who?
[4] A. No, sir. One of the officers.
[5] Q. Okay. Was it the same officer that brought you into
[6] the room the first time?
[7] A. No, sir. I'm talking about at the -- at the -- at
[8] my business.
[9] Q. Okay.
[10] A. I didn't talk with -- to nobody about that over
[11] there at the downtown.
[12] Q. Okay. All right.
[13] A. They -- the ones at the business said they had
[14] chased them and run them off down the highway and
[15] they took a ditch -- a drainage ditch.
[16] Q. Okay.
[17] A. And they caught one. And then after the other
[18] ones --
[19] Q. All right. And do you recall the name of the
[20] officer that told you that?
[21] A. No, sir.
[22] Q. Can you describe him? Was he -- he was wearing a
[23] uniform.

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[1] with the Montgomery Police Department pressure you
[2] to file a warrant?
[3] A. No, sir.
[4] Q. Nobody did at all?
[5] A. All they said is that they had -- when they got
[6] there, there was a guy that was walking away from
[7] the building, got in a car, and took off. And they
[8] started chasing him. And when I got there, he said
[9] they had caught one and the other one was down the
[10] drainage canal and they had found a ski mask and a
[11] pistol in the car.
[12] Q. Okay.
[13] A. And that's the most I had a conversation to that --
[14] of -- with any of them about that --
[15] Q. All right.
[16] A. -- about what happened.
[17] Q. Okay. And other than that --
[18] A. Nobody's -- no, sir.
[19] Q. Nobody said anything to you about wanting you to
[20] press charges?
[21] A. No. They just said to press charges, I had to go
[22] downtown.
[23] Q. Okay. If you can recall, during that period of time

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[1] A. Right.
[2] Q. White or black?
[3] A. White.
[4] Q. All right. Young or old?
[5] A. I guess in his forties.
[6] Q. All right. Fat or thin?
[7] A. In shape.
[8] Q. Okay.
[9] MR. NELMS: If you'll give me a minute, I
[10] think we're finished.
[11] THE WITNESS: Okay.
[12] (Off-the-Record discussion.)
[13] Q. Did you ever tell anyone with the Montgomery Police
[14] Department on March the 31st or April -- the
[15] morning -- early morning of April the 1st that you
[16] did not wish to press charges?
[17] A. No, sir.
[18] Q. Did you tell anybody that you were in a hurry, you
[19] wanted to go home?
[20] A. Huh-uh.
[21] Q. Is that a no?
[22] A. No, sir.
[23] Q. Okay. And you -- I asked you earlier. Did anyone

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[1] that you were at the police station between one
[2] thirty and four o'clock in the morning, how many
[3] different police officers or detectives did you
[4] speak with that night?
[5] A. It was just that one that put me in the room. The
[6] next thing I -- I did after that was go down to the
[7] place where I signed a warrant, and I was on my way
[8] home.
[9] Q. Okay. Would that be the magistrate's office?
[10] A. I guess.
[11] Q. Okay.
[12] A. That -- you know, like I said, that's -- that's the
[13] only time I had any ties with them at that time.
[14] MR. NELMS: Okay. That's it. I
[15] appreciate it.
[16] THE WITNESS: You're welcome, Mr. Nelms.
[17] MR. GILLIS: I think I might have just one
[18] or two.
[19] EXAMINATION
[20] BY MR. GILLIS:
[21] Q. Now, I think I heard you say that there was some
[22] flower pots that were on the floor on the inside of
[23] your building?

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[1] A. Yes, sir.
[2] Q. Okay. I don't remember hearing you say anything
[3] about any bottle of water or anything like that in
[4] the window -- on the edge of the window.
[5] A. Water?
[6] Q. Yeah.
[7] A. No, sir.
[8] Q. And I don't remember hearing you say anything
[9] about -- you did say there was some soil that --
[10] A. Pots --
[11] Q. -- maybe was in the pots?
[12] A. Yes, sir.
[13] Q. Okay. But I don't remember you saying anything
[14] about having to mop up. You sweep up soil.
[15] A. Right. Yes, sir.
[16] Q. You didn't have to do any mopping, did you?
[17] A. There's the rain that came from the weather from
[18] inside, because there's no way to block the rain
[19] when the windows are open.
[20] Q. I understand that. But you didn't have to do any
[21] mopping?
[22] A. No. Any mopping with water, no, sir.
[23] Q. Okay. And when you -- when you came back to your

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[1] business later on the next day --
[2] A. Yes, sir.
[3] Q. -- did you have to go in there and do anything in
[4] particular in your business?
[5] A. No, sir.
[6] Q. Okay.
[7] MR. NELMS: Object to the form.
[8] Q. You said that this was a motion alarm?
[9] A. Yes, sir.
[10] Q. And when you say motion alarm, is it any kind of
[11] motion in the room or what?
[12] A. Well, it's some sensors. And then -- plus, you have
[13] some little sensors over the doors of every opening.
[14] Q. Okay.
[15] A. That -- it has doorways.
[16] Q. Okay.
[17] A. And when you -- if they come unaligned, it sets them
[18] off.
[19] Q. Okay.
[20] A. Or something object -- or somebody walking in or
[21] anything would set it off inside.
[22] Q. Okay. Do you know whether or not somebody trying to
[23] get in through the window, whether or not that would

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[1] set it off?
[2] A. Yes, sir.
[3] Q. It would?
[4] A. Yes, sir.
[5] Q. In any event, you do know and are you -- you do know
[6] that you didn't have to mop up any water or anything
[7] that night?
[8] A. No, not -- no, sir.
[9] Q. Okay.
[10] MR. GILLIS: All right. That's all I
[11] have.
[12] EXAMINATION
[13] BY MR. NELMS:
[14] Q. You say that someone coming through the window might
[15] set off the alarm; is that correct?
[16] A. Yes, sir. Anything to brake the plain, I -- you
[17] know, inside motion, yeah, would set it off.
[18] Q. Okay. But you also said that on a number of other
[19] occasions there were false alarms?
[20] A. Yes, sir. And that could be by pulling on the
[21] doors.
[22] Q. Okay.
[23] A. And then getting these sensors -- because a lot of

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[1] kids in the trailer park, they was always at night
[2] walking around, that possibly could have done that.
[3] Q. Okay. But you said you've never had any problem --
[4] A. No, sir.
[5] Q. -- since you've been at that -- that location with
[6] anybody breaking in to your place?
[7] A. No, sir.
[8] Q. No, sir, which? No, sir, you've never had a problem
[9] with anybody braking into your --
[10] A. Never had nothing broken since -- before that --
[11] that happened, no, sir. I'd never had nobody
[12] break-in.
[13] Q. Okay. And is there any way for you to tell when the
[14] alarm goes off from exactly what location within the
[15] building that the alarm has been tripped and set
[16] off?
[17] MR. BODIN: Object to the form. You can
[18] answer.
[19] A. The only thing it would tell you on the alarm system
[20] is which door was messed with or whatever was
[21] pulled. Whatever it showed the default before I set
[22] the alarm back off.
[23] Q. Okay. And did you take an occasion to observe

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[1] which --
[2] A. Oh, yes. I had to go and reopen and close them and
[3] then set it off or it wouldn't go off. Unless you
[4] line it back up the way it was supposed to be, you
[5] could set the alarm off.
[6] Q. Okay. And after the alarm went off for the second
[7] time on March 31, 2005, did you take an occasion to
[8] determine which of the sensors set off the alarm?
[9] A. No, sir. Not that I remember.
[10] Q. Okay.
[11] A. I just went and set it back off like normal, you
[12] know --
[13] Q. Well, I guess my question is, you have your contact
[14] sensors that are on the doors and then you have
[15] motion sensors within the area of the building;
[16] right?
[17] A. Right. Yes, sir.
[18] Q. Okay. And that night when the second alarm went
[19] off, the one that brings us all here today, you
[20] don't know whether it was the motion detectors that
[21] set off the alarm or whether it was the contact?
[22] A. No, sir. I couldn't be sure.
[23] Q. And the window in question that we've talked about

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[1] MR. NELMS: Thank you.
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[1] today, the one that was left open, it does not have
[2] a --
[3] MR. GILLIS: Object.
[4] MR. BODIN: Object to the form.
[5] Q. There was a window that was open when you arrived at
[6] your business --
[7] A. Yes, sir.
[8] Q. -- that night; right?
[9] A. Yes, sir.
[10] Q. It's the window that you've described to me that had
[11] the three pots on the sill; right?
[12] A. Yes, sir.
[13] Q. And that window was open when you arrived that
[14] night, was it not?
[15] A. Yes, sir.
[16] Q. Okay. And the police officers were inside your
[17] building; right?
[18] A. Yes, sir.
[19] Q. That window, the one we're describing right now,
[20] right here --
[21] A. Yes, sir.
[22] Q. -- does it have a contact sensor on it?
[23] A. No, sir.

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[1] REPORTER'S CERTIFICATE

[2]
[3] STATE OF ALABAMA
[4] COUNTY OF MONTGOMERY
[5]

[6] I, Angela Fulmer, Certified Shorthand Reporter
[7] and Notary Public in and for the State of Alabama at
[8] Large, do hereby certify that on February 20, 2006,
[9] pursuant to notice and stipulation on behalf of the
[10] Plaintiff, I reported the deposition of ANTHONY
[11] ARNAUD, who was first duly sworn by me to speak the
[12] truth, the whole truth, and nothing but the truth, in the
[13] matter of Civil Action Number 2:05CV-687-F, now pending
[14] in the United States District Court for the Middle
[15] District of Alabama, Northern Division, that the
[16] foregoing 47 typewritten pages contain a true and
[17] accurate transcription of the examination of said witness
[18] by counsel for the parties set out herein; that the
[19] reading and signing of said deposition was waived by
[20] witness and counsel for the parties.

[21] I further certify that I am neither
[22] of kin nor of counsel to the parties to said cause, nor
[23] in any manner interested in the results thereof.